

IN THE MATTER OF THE
APPLICATION OF HAROLD F.
BURTON, ET AL FOR A SPECIAL
HEARING AND VARIANCE ON
PROPERTY LOCATED ON THE NORTH-
WEST CORNER OF YORK ROAD AND
MT. CARMEL ROAD (17000 YORK
ROAD)
7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

CASE NO. 89-76-SFHA

OPINION

This case comes before this Board on appeal from a decision of the Deputy Zoning Commissioner granting the Petition for a Nonconforming Use of an apartment over a garage in a commercially zoned property and variances to allow the existing buildings to remain.

Testimony and evidence presented to the Board came basically from stipulations agreed to by all parties. It was stipulated that the continuous use of the apartment predated 1945 with no significant interruptions in its occupancy. In addition to the stipulations, Wallace S. Lippincott, Jr., the Community Planner for this area of the County testified that he had participated in meetings on the site in which an acceptable landscape plan was proposed and that the Planning Department was in favor of granting these two petitions. After consideration of the testimony and evidence presented both by stipulation and by witness, the Board is of the opinion that the Findings of Fact and Conclusions of Law and resulting Order by the Deputy Zoning Commissioner are proper and will be incorporated as a part of this Order with one additional restriction that the landscape plan as proposed be complied with.

ORDER

It is therefore this 3rd day of May, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Nonconforming Use

Case No. 89-76-SFHA
Harold F. Burton, et al

of an apartment over a garage be and the same is GRANTED and that the requested setbacks as described in the Petition be and the same are GRANTED and that in essence the Deputy Zoning Commissioner's Order be incorporated with this Board's Order with the addition of the restriction concerning the landscape plan submitted as Appellee's Exhibit No. 5.

1. The granting of the Petitions in this case are contingent upon compliance with the landscaping plan presented as Appellee's Exhibit No. 5.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Henry H. Lewis
Henry H. Lewis

Lyne B. Moreland
Lyne B. Moreland

IN RE: PETITIONS FOR SPECIAL HEARING
AND ZONING VARIANCE - NW/Corner
York Road and Mt. Carmel Road
(17000 York Road)
7th Election District
3rd Councilmanic District
Harold F. Burton, et al
Petitioners

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 89-76-SFHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to establish the nonconforming use of an apartment over a garage on a commercially zoned property, and variances to permit front yard setbacks of 0 feet and 7.5 feet in lieu of the required 15 feet for an existing dwelling; a side street setback of 0 feet in lieu of the required 10 feet for an existing garage/apartment building; and parking spaces to be located 0 feet from the street right-of-way line in lieu of the required 10 feet, all as more particularly described on Petitioner's Exhibit 1.

The Petitioners, Dr. Harold Burton and Basil M. Burton, appeared, testified and were represented by Jeffrey H. Gray, Esquire. Also appearing on behalf of the Petition were Paul W. Botzler and Emory E. Leight. Appearing as interested parties were Dr. Stanley Cohn and Karen Cohn, adjoining property owners.

Testimony indicated that the subject property, known as 17000 York Road, zoned R.M.-C.R., is improved with a two-story stucco dwelling to the front of the property which has existed for approximately 175 years, and in the rear, a two-story concrete block garage which was constructed in approximately 1940.

Testimony indicated that the subject property has been in the Burton family since approximately 1920 and that Petitioners grew up on the

property. Petitioners testified that since approximately 1940, an apartment has existed on the second floor of the two-story garage to the rear of the property. Emory E. Leight, a resident of the area, verified this fact. To further support the continued use of the garage as an apartment, Petitioners introduced as Petitioner's Exhibit 2, a letter dated June 6, 1963, signed by Donald B. Foster and Gladys Chilton, confirming that a one-bedroom residential apartment has existed above the garage located on Mt. Carmel Road to the rear of what is known as 17000 York Road since prior to 1945. Dr. Burton testified that the apartment has been continuously occupied without interruption but for a brief period during a change in tenants, which he does not believe often exceeded a three-day period.

Testimony further indicated that the front yard setback for the main dwelling and the parking variances requested have been necessitated as a result of the use of the property for commercial purposes. Dr. Burton and Mr. Gray indicated that prior to April, 1987 the front property had been used as a residence. Mr. Gray and his family lived in the dwelling while Mr. Gray operated his legal practice from two rooms on the first floor of the main building from April, 1966 to April, 1997. In April, 1997, Mr. Gray and his family moved. Testimony indicated the building has become unsuitable for residential purposes due to its being so close to the road.

Mr. Gray continued to use the main structure for his law practice, a use which is permitted in the B.M. zone. However, due to the location of the dwelling on York Road, the requested variances were necessitated. Testimony indicated due to the age, historic value of the subject property and the goal of the surrounding community to promote business and commercial uses in this area, strict compliance with the zoning

regulations would result in unreasonable hardship as the building would have to be torn down. Without the requested variances, the building could not be preserved and used for purposes permitted in the B.M. zone.

Testimony indicated that the parking variance is necessary due to the small size of the lot and the need for parking on-site rather than requesting a variance for the number of parking spaces. Testimony indicated that the State had issued permits and approved the construction of the parking lot 0 feet from the street right-of-way and had approved the ingress and egress to the property. Petitioners contended that to deny the requested variances would result in undue hardship.

Dr. Cohn testified that he agreed to the need of the business and commercial use of the subject property, the preservation of the existing buildings, and the need for on-site parking. He expressed concern as to the lack of comments in the case file from the Baltimore County Health Department and the Department of Environmental Protection and Resource Management (DEPRM) in view of the standards imposed upon him regarding water and sewer requirements for the adjacent property. After the hearing, a request was made of the Bureau of Water Quality and Resource Management, DEPRM, to inspect the subject property and determine if any specific requirements should be imposed. Gerald Zitnik, Supervisor, Water and Sewer, DEPRM, indicated no specific requirements need be imposed as the water or sewer conditions of this property are satisfactory.

Petitioners seek relief from Section 104.1, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) requesting that a determination be made that a nonconforming use of an apartment over the garage on commercially zoned property exists.

The uncontradicted evidence submitted by Petitioners' witnesses clearly established that the use of the apartment over the garage located to the rear of 17000 York Road has been continuous and without interruption since prior to the zoning becoming effective in 1945.

Further, Petitioners seek relief from Sections 235.1, 235.2, and 409.8A.4 pursuant to Section 307 of the B.C.Z.R.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Sole*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variances are granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

After due consideration of the testimony and evidence presented, the Petitions for Special Hearing and Variances should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of October, 1988 that the nonconforming use of an apartment over a garage on a commercially zoned property, and front yard setbacks of 0 feet and 7.5 feet in lieu of the required 15 feet for the existing dwelling; a side street setback of 0 feet in lieu of the required 10 feet for the garage/apartment building; and parking spaces to be located 0 feet from the street right-of-way line in lieu of the required 10 feet, in accordance with Petitioner's Exhibit 1, be approved, and as such, the Petitions for Special Hearing and Zoning Variance are hereby GRANTED, subject, however, to the following restrictions:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

Ann M. Nastarcowicz
ANN M. NASTARCOWICZ
Deputy Zoning Commissioner
for Baltimore County

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
700 N. Howard Street
Baltimore, Maryland 21204
444-6000

J. Robert Hayes
Deputy Zoning Commissioner

October 19, 1988

Jeffrey H. Gray, Esquire
17000 York Road
Monkton, Maryland 21111-0051

RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
NW/Corner York Road and Mt. Carmel Road
(17000 York Road)
7th Election District - 3rd Councilmanic District
Harold F. Burton, et al - Petitioners
Case No. 89-76-SFHA

Dear Mr. Gray:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Zoning Variance have been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

Ann M. Nastarcowicz
ANN M. NASTARCOWICZ
Deputy Zoning Commissioner
for Baltimore County

ANN:bjs

cc: Dr. & Mrs. Stanley Cohn
18749 Spooks Hill Road
Parkton, Maryland 21120

People's Counsel

File

